

REMARKS/ARGUMENTS

Regarding Amendments

In the specification, the "Cross Reference to Related Applications" section has been amended to update the status of referenced applications. These corrections are of a clerical nature and do not add "new matter".

Claims 1-77 are now pending.

No claims stand allowed.

The 35 U.S.C. § 101 Double Patenting Rejection

Claims 9-68 and 70-77 stand rejected under 35 U.S.C. as allegedly claiming the same invention as that of claims 1, 6-23, 28-45, 50-54, 59-63, 68-73, and 78-87 of U.S. Patent Application serial no. 09/661,582 (the '582 application), filed on September 14, 2000.¹ This rejection is respectfully traversed.

According to 35 U.S.C. § 101, "whoever invents or discovers any new and useful process ... may obtain a patent therefore."² The term "same invention," in this context, means an invention drawn to *identical* subject matter.³

¹ Office Action dated October 17, 2003, ¶ 3.

² 35 U.S.C. § 101.

³ See *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). (emphasis added)

The independent claims (claims 1, 23, 45, 54, 63, 73, 82, and 85) of the '582 application recite in part:

said verification including determining binary compatibility of earlier program unit implementations with later program unit implementations.

Claims 6-22, 28-44, 50-53, 59-62, 68-72, and 78-81, and 83-84 of the '582 application are dependent claims and thus include this limitation.

Claims 9-68 and 70-77 of the present application do not recite verification including determining binary compatibility of earlier program unit implementations with later program unit implementations, so the '582 application and the present application are not drawn to *identical* subject matter. Accordingly, the Applicant respectfully requests the 35 U.S.C. § 101 rejection be withdrawn.

The Obviousness-Type Double Patenting Rejection

Claims 1-9 and 69 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10, 11, 15, 16, 17, 18, and 19 of commonly owned U.S. Patent Application serial no. 09/661,582, filed on September 14, 2000.⁴ Submitted herewith is a terminal disclaimer in accordance with 37 CFR 1.321 (b) and (c). Accordingly, the Applicant respectfully requests the obviousness-type double patenting rejection be withdrawn.

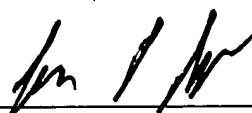
In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Request for Allowance

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Respectfully submitted,
THELEN REID & PRIEST, LLP



John P. Schuab
Reg. No. 42,125

Dated: December 10, 2003

Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Tel. (408) 292-5800
Fax. (408) 287-8040

⁴ Office Action ¶ 5.